

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 490/Srt/2023 (Assessment Year 2011-12)  
(Hybrid hearing)

Antima Rameshkumar Malpani, B-301 Gokuldham Society, Parvat Patiya, Surat (Gujarat)-395010. <b>PAN No. AKHPM 1951 F</b>	Vs.	I.T.O., Ward-2(3)(1), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Kishore Gheewala, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	18/07/2023
Date of hearing	25/10/2023
Date of pronouncement	25/10/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 17/05/2023 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:

- “1. The invocation of Sec. 147 by the Ld. A.O. is unjustified and illegal as no reasonable person could have jumped to the conclusion of escapement of income on the basis of the material, then available with the Ld. A.O.*
- 2. The initiation of proceedings u/s 147, appear to have been vitiated with incurable illegality for want of approval of the prescribed authority.*
- 3. Without prejudice to the above, the impugned order of the CIT(A) and the Assessment Order of the Ld. A.O. are grossly unjust, rendering the matter liable to be remanded in the interest of justice.*
- 4. Without prejudice to the above, the Ld. CIT(Appeals) having miserably failed to understand and appreciate that there are specific and categorical provisions to deal with non-compliances at the Assessee's end and the appellant has already*

*been penalized for the same vide order Dt. 19.04.2019, has caused gross injustice to the appellant by not admitting the additional evidences.*

5. *The Ld. CIT(A) has again miserably failed to understand and appreciate that the appellant's account from the share broker's books, giving complete script wise details of purchase value and sale value of transactions with profit or loss in each transaction and with full year complete summary of loss and profit of the transactions was already available with the Ld. A.O. and the net loss of Rs. 3,79,737.99/- was apparent on the face of it even to a common man, needing no explanation whatsoever for the same and has therefore committed a blunder of ignoring the same under the pretext of Additional Evidence, etc.*
  6. *The Ld. CIT(A) and the Ld. A.O. have connived at the fact of appellant's loss of Rs. 3,79,737.99/- and have committed an excess of law by confirming/making the addition thereof in complete disregard of their judicious and quasi-judicious status.*
  7. *The Ld. CIT(A) has erred in confirming and the Ld. Has erred in making the addition of Rs. 5,28,873/- in respect of cheques deposited in the appellant's bank account.*
  8. *The Ld. CIT(A) has erred in confirming and the Ld. Has erred in making the addition of Rs. 1,50,000/- in respect of cash deposited in the appellant's bank account.*
  9. *The Appellant craves leave to add to, alter or amend the present grounds of Appeal.*
2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (ld. AR) of the assessee submits that the case of assessee was reopened on the basis of information that the assessee engaged into share transaction of Rs. 2.55 crores, through Bombay Stock Exchange (BSE) and that the assessee has not filed any return of income. The Assessing Officer passed the *ex parte* assessment order under Section 144 r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act) on 29/10/2018 by making addition of Rs. 6,78,873/- under Section 69A of the Act on account of credit entry in the bank account by holding such entry as unexplained. The Assessing Officer

also made addition of Rs. 3,79,736/- on account of profit earned on share transaction by treating it as undisclosed income. The assessee could not furnish complete details as his consultant/Chartered Accountant was busy in completing audit work and in filing return of income in the month of October, 2018 and that the assessee was prevented by sufficient cause. Before the Id. CIT(A), the assessee filed application for admission of additional evidence to substantiate the credit in the bank account and the transaction in share trading. The application of assessee for admission of additional evidence was rejected by the Id. CIT(A) and confirmed the addition made by Assessing Officer. The Id. AR of the assessee submits that the assessee has good case on merit and is likely to succeed, if the assessee is given one more opportunity to explain his case on merit. Further, the assessee may be allow to file additional evidences. The Id. AR of the assessee submits that he undertakes on behalf of assessee to be more vigilant in future and not to make any delay, if the assessee is given such opportunity. The Id. AR of the assessee prayed to restore the case to the file of Assessing Officer with the direction to allow the assessee to file required evidence to substantiate the addition on both the issues.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr.DR) for the revenue supported the orders of lower authorities. The Id. Sr.DR for the revenue submits that the assessee has not shown any

sufficient cause either for non-appearance before the Assessing Officer or any good cause for allowing additional evidence before the Id. CIT(A). the Id CIT(A) discussed all the aspect and facts of the case before confirming the order of assessing officer. The assessee does not deserve any further leniency.

4. I have considered the submissions of both the parties and perused the record carefully. I find that the case of assessee was reopened on the basis of information that the assessee has made transaction with BSE of Rs. 2.55 crores. The Assessing Officer made both the additions for want of submission and evidences on behalf of assessee. I further find that that on facing additions, on account of unexplained cash credit and addition of profit on share transaction, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee furnished additional evidence with regard to confirmation of account and cheques received from later on. The assessee raised plea to admit such additional evidences. The Id. CIT(A) rejected the plea of assessee for admission of additional evidence by taking view that the assessee does not fulfill the criteria/conditions prescribed under Rule 46(1). I find that the assessee has tried to substantiate the credit in the bank account by filing confirmation of account and cheques received from lenders and various other evidences. The evidences so furnished by assessee are relevant for proper appreciation of facts related with issues involved in the present

appeal. Such evidences have direct bearing on both the issues. Therefore, on considering the plea of Id. AR of the assessee, the assessee is allowed to file such evidences to substantiate the cash credit as well as profit earned on share transaction. Considering the fact that such evidence was neither available before the Assessing Officer nor was considered by the Id. CIT(A), therefore, I deem it appropriate to restore both the grounds of appeal to the file of Assessing Officer to reconsider both the grounds and pass the order in accordance with law. The assessee is given liberty to place on record all the evidences in support of his claim and not to make any further delay. Needless to direct that before passing the order, the assessing officer shall grant reasonable and fair opportunity to the assessee.

5. In the result, this appeal of assessee is allowed for statistical purposes.

Order announced in open court on 25<sup>th</sup> October, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 25/10/2023

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat